REMARKS

Claims 1-6 and 9-11 are pending in the application. Claims 1-6 and 9-11 are rejected. Claims 12-23 have been canceled in response to a Restriction Requirement. Applicant reserves the right to pursue claims 12-23 in one or more continuation and/or divisional applications.

Claims 1-6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boston (US Patent 4,766,293, hereinafter Boston) in view of Roslak et al. (US Patent 7,010,501, hereinafter Roslak).

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims

that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Rejection Under 35 U.S.C. 103

Claims 1-6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boston in view of Roslak. The rejection is traversed.

Boston and Roslak, alone or in combination, fail to teach or suggest Applicant's invention of independent claim 1, and thus dependent claims 2-6 and 9-11, as a whole.

Boston discloses a portable financial transaction card capable of authorizing a transaction in foreign currencies. As disclosed in Boston, a transaction limit associated with each account of the cardholder is stored in memory. The cardholder selects the foreign currency which will be used for a purchase and, after selection of the foreign currency, the processor will convert the transaction limit from a local or base currency to the selected foreign currency. During the transaction, the processor compares the transaction amount with the converted transaction limit to determine if an approval code should be generated. (Boston, Abstract).

Boston, however, alone or in combination with Roslak, fails to teach or suggest Applicant's claim 1, as a whole. Namely, Boston fails to teach or suggest at least the limitation of "evaluating said transaction data using said budgetary data to determine at least whether a transaction value exceeds a budgetary constraint for a transaction, wherein said budgetary constraint comprises at least one of an annual budget and a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction," as claimed in Applicant's claim 1.

In the Office Action, the Examiner asserts that the limitations "wherein said budgetary data comprises a plurality of records, each record comprising a budgetary item identifier field

and at least one of an annual budget field and a periodic budget field" and "wherein said budgetary constraint comprises at least one of an annual budget and a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction" are non-functional descriptive limitations because they do not affect the steps of the method. (Office Action, Pg. 3). Applicant respectfully disagrees.

Applicant respectfully submits that these "wherein" limitations are functional limitations. The first "wherein" limitation cited by the Examiner describes the organization of the budgetary data which is stored in the database and used in performing the evaluation, and thus, is clearly is functionally related to the steps of storing and evaluating. The second "wherein" limitation cited by the Examiner further defines a particular constraint that is used in evaluating transaction data to determine whether a transaction value of a transaction exceeds a budgetary constraint. More specifically, the second "wherein" limitation indicates that the budgetary <u>constraint</u> comprises at least one of an annual budget and a periodic budget and, further, indicates <u>how the budgetary constraint value can be obtained</u> (namely, via the budgetary item identifier field of the budgetary data <u>using</u> a budgetary item identifier <u>of the transaction</u>). Thus, the limitations cited by the Examiner are clearly functionally related to the performance of both the storing and evaluating steps and, therefore, constitute more than mere non-functional descriptive limitations.

Furthermore, in the Office Action, in the alternative, the Examiner asserts that the "it is old and well known in the art <u>for a record to have several fields and to store variables in specific fields</u>. These fields help in the efficient arrangement and retrieval of data for further processing and/or display. It would have been obvious to one of ordinary skill in the art to modify Boston to include these features." (Office Action, Pg. 3, Emphasis added). Applicant respectfully disagrees.

First, Applicant notes that the Examiner has failed to specifically address the limitations of Applicant's claim 1. Applicant's claim 1 includes more than a description of fields stored in a database. The Examiner asserts that it is old and well known in the art for a record to have several fields and to store variables in specific fields. The Examiner does not assert that it is old and well known in the art that "budgetary constraint comprises at least one of an annual budget and a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction," as claimed in Applicant's claim 1. Rather, the Examiner's assertion regarding common knowledge is merely directed toward a <u>generic</u>

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statement about storage of information in a database. Thus, since the Examiner's rejection in view of knowledge of one of ordinary skill in the art fails to specifically address the limitations of Applicant's claim 1 which are not taught by Boston or Roslak, Applicant respectfully submits that the Examiner's reliance on knowledge of one of ordinary skill in the art fails to bridge the substantial gap between Boston and Roslak and Applicant's claim 1.

Second, Applicant respectfully submits that the basis for the Examiner's rejection in view of knowledge of one of ordinary skill in the art is incorrect. The Examiner's rejection asserts that it is old and well known in the art for a record to have several fields and to store variables in specific fields, however, Applicant's claim 1 includes limitations directed to more than just storage of information in fields of a database. Specifically, Applicant's claim 1 includes the limitation of evaluating transaction data using budgetary data to determine whether a transaction value exceeds a budgetary constraint for the transaction. In order to perform this evaluation, the correct budgetary constraint must be retrieved from the budgetary data. The correct budgetary constraint to be used in the evaluation is determined using information associated with the transaction. Specifically, Applicant's claim 1 indicates that the budgetary constraint is determined from the budgetary data "using a budgetary item identifier of the transaction." Applicant respectfully notes that the budgetary item identifier of the transaction is not a value of a specific field of a database. Rather, the budgetary item identifier of the transaction is an identifier associated with the transaction itself, i.e., the transaction for which the evaluation is being performed. Thus, the basis for the Examiner's rejection in view of knowledge of one of ordinary skill in the art (namely, storage of fields in a database) is incorrect.

Third, Applicant respectfully notes that, with respect to reliance on common knowledge in the art, MPEP § 2144.03B states that "[o]rdinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection)...The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241."

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The Examiner has failed to provide any evidence in support of the assertion regarding knowledge of one of ordinary skill in the art. Rather, the Examiner merely makes a conclusory statement that that it is well known to have several fields and to store variables in specific fields. Although the Examiner describes an advantage of the use of fields for storing data, this advantage clearly does not constitute <u>evidence</u> in support of the assertion regarding knowledge of one of ordinary skill in the art. There is simply no evidence provided to support the Examiner's assertion. Thus, Applicant submits that the Examiner's reliance on knowledge of one of ordinary skill in the art is improper. Applicant respectfully requests that the Examiner provide evidence in support of any assertion regarding knowledge of one of ordinary skill in the art.

Furthermore, in the Response to Arguments section of the Office Action, the Examiner further asserts that "the transaction limit that is set as disclosed in Boston is interpreted to include budgetary data. According to 'Little Oxford Dictionary', a budget is defined as the amount of money needed or available. Hence Boston discloses budgetary data." (Office Action, Pg. 5).

Applicant respectfully notes that, again, the Examiner has failed to specific address the limitations of Applicant's claim 1. The Examiner merely asserts that Boston discloses budgetary data, however, the Examiner has failed to address at least the limitation of "evaluating said transaction data using said budgetary data to determine at least whether a transaction value exceeds a budgetary constraint for a transaction, <u>wherein said budgetary constraint comprises at least one of an annual budget and a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction</u>," as claimed in Applicant's claim 1. The Examiner fails to address how a budgetary constraint is determined, much less that a budgetary constraint is determined <u>using a budgetary item identifier of a transaction which is being evaluated</u>. The Examiner fails to address the budgetary item identifier of a transaction which is being evaluated, as claimed in Applicant's claim 1. The Examiner's reasoning makes no mention of a transaction which is being evaluated, much less any information associated with a transaction which is being evaluated or use of such information in evaluating a transaction. Thus, Applicant respectfully submits that the Examiner's reasoning fails to support the rejection of Applicant's claim 1 under 35 U.S.C 103(a).

As described in Applicant's previous response, Boston is devoid of any teaching or suggestion of <u>budgetary</u> data. Rather, Boston merely provides a capability whereby a transaction amount is compared with a transaction limit for a selected <u>account</u> stored on the financial

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transaction card. Specifically, Boston states that "[t]he transaction limit is set by the issuer and can take a number of forms. Where the <u>account</u> is for <u>checking</u>, <u>savings</u>, or similar types of accounts, the transaction limit will typically represent the amount which the customer has on deposit with the issuer...The transaction limit can also be a fixed dollar level based upon the creditworthiness of the customer." (Boston, Col. 5, Lines 44-58, Emphasis added).

In other words, account information, as described in Boston, is simply not budgetary data, as claimed in Applicant's claim 1. Specifically, information about the savings account, checking account, or creditworthiness of a customer, as taught in Boston, is different than the annual budget or periodic budget information of Applicant's claim 1. Boston relies solely on <u>account</u> data. Boston is devoid of any teaching or suggestion of <u>budgetary</u> data. Thus, Boston must also fail to teach or suggest the specific budgetary information claimed in Applicant's claim 1. Thus, for at least these reasons, Boston fails to teach or suggest at least the limitation of "wherein said budgetary constraint comprises at least one of an annual budget and a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction," as claimed in Applicant's claim 1.

Furthermore, Roslak fails to bridge the substantial gap between Boston and Applicant's claim 1.

In general, Roslak discloses a personal shopping system for use in the home of a user and a shopping establishment. As disclosed in Roslak, the system includes a host computer which is coupled to a host modem and, optionally, to at least one wireless multi-access point. The portable terminal is configured to read bar codes associated with items related to shopping, and includes a memory, a bar code reader, a wireless transceiver, and a data interface. The data interface of the terminal communicates with a data interface of the shopping establishment kiosk cradle or directly with the shopping establishment's communications network. (Roslak, Abstract).

Roslak, however, alone or in combination with Boston, fails to teach or suggest Applicant's claim 1, as a whole. Namely, like Boston, Roslak fails to teach or suggest at least the limitation of "evaluating said transaction data using said budgetary data to determine at least whether a transaction value exceeds a budgetary constraint for a transaction, <u>wherein said budgetary constraint comprises at least one of an annual budget and a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction</u>," as claimed in Applicant's claim 1.

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Although Roslak describes shopping transactions, Roslak merely describes transaction tickets associated with scanned items, evaluation of transactions with respect to security, compiling profiles based on shopper transaction history, and like functions. Roslak is devoid of any teaching or suggestion of <u>budgetary</u> data, much less evaluation of transaction data using budgetary data. Thus, Roslak must also be devoid of any teaching or suggestion of using budgetary data to determine at least whether a transaction value exceeds a budgetary constraint for a transaction, much less that the budgetary constraint includes an annual budget and/or a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction, as claimed in Applicant's claim 1.

As such, Roslak, alone or in combination with Boston, fails to teach or suggest at least the limitation of "evaluating said transaction data using said budgetary data to determine at least whether a transaction value exceeds a budgetary constraint for a transaction, wherein said budgetary constraint comprises at least one of an annual budget and a periodic budget determined via the budgetary item identifier field of the budgetary data using a budgetary item identifier of the transaction," as claimed in Applicant's claim 1.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, <u>considered as a whole</u>, would have been obvious. Thus, it is impermissible to focus either on the "gist" or "core" of the invention. Moreover, the invention <u>as a whole</u> is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. Boston and Roslak, alone or in combination, fail to teach or suggest Applicant's claim 1, as a whole.

As such, independent claim 1 is patentable over Boston in view of Roslak under 35 U.S.C. 103(a). Furthermore claims 2-6 and 9-11 depend, directly or indirectly, from independent claim 1 while adding additional elements. Therefore, these dependent claims also are non-obvious and are patentable over Boston in view of Roslak under 35 U.S.C. §103 for at least the same reasons discussed above in regards to independent claim 1.

As such, Applicant's claims 1-6 and 9-11 are patentable over Boston in view of Roslak under 35 U.S.C. §103(a). Therefore, the rejection should be withdrawn.

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Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Michael Bentley at (732) 383-1434 or Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated: 1/23/08

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